

MADISON HEARING OFFICE
P.O. Box 7975
Madison, WI 53707

**APPEAL TRIBUNAL
DECISION**

State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division

Telephone: (608) 266-8010
Fax: (608) 327-6498

Hearing No. 21016432MD

Mailed to:

VICTOR FORBERGER, ESQUIRE
ATTY VICTOR FORBERGER
2509 VAN HISE AVE
MADISON WI 53705

In the matter of:

Employee: BRIAN S BEMKE, APPELLANT

B.C. & S.S. No.: 14/***-**-2732

vs.

Employer: NOT APPLICABLE

UI Account No.:

APPEAL RIGHTS

SEE THE DATE BELOW FOR THE TIME LIMIT.

IF YOU ARE APPEALING BECAUSE YOU FAILED TO APPEAR FOR THE SCHEDULED HEARING AND ARE REQUESTING A NEW HEARING, FOLLOW THE FAILURE TO APPEAR PROCEDURES ON THE REVERSE SIDE.

IF YOU ARE APPEALING FOR ANY OTHER REASON, YOU MUST FOLLOW THE PETITION PROCEDURES ON THE REVERSE SIDE.

IF YOU DO NOT UNDERSTAND THE PROCEDURES, PLEASE CALL THE UI HEARING OFFICE FOR ASSISTANCE.

DECISION: SEE ATTACHED DECISION WHICH AFFIRMS THE INITIAL DETERMINATION.

Employee appeared by:

VICTOR FORBERGER
ATTY

Employer appeared by:

NOT APPLICABLE

Administrative Law Judge	Dated and Mailed	Petition Must Be Received or Postmarked By:
ROCHELLE JONES	NOVEMBER 8, 2021	NOVEMBER 29, 2021

(SEE REVERSE FOR ADDITIONAL INFORMATION)

Decision mailed to:

BRIAN S BEMKE, 2727 S 13TH ST APT 3, MILWAUKEE, WI 53215-3863
VICTOR FORBERGER, ESQUIRE, ATTY VICTOR FORBERGER, 2509 VAN HISE AVE,
MADISON, WI 53705

THE DEPARTMENT'S DETERMINATION HELD: that, as of week 28 of 2021, the claimant was receiving social security disability insurance (SSDI) benefits. As a result, unemployment benefits were denied while the claimant was also receiving social security disability insurance benefits.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

FINDINGS OF FACT

The claimant has been receiving SSDI benefits since October or November of 2018. He receives benefits in the amount of \$674.00 each month. The claimant suffers from many significant health problems but tries to supplement his meager SSDI income with employment to the extent he is able to do so.

DISCUSSION

The issue to be decided is whether the claimant is ineligible for unemployment benefits as of week 28 of 2021, because of the receipt of social security disability insurance benefits.

Wisconsin Stat. §108.04(12)(f) provides:

1m. The intent of the legislature in enacting this paragraph is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

2m. In this paragraph, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

3. a. Except as provided in subd. 3. b. to d., an individual is ineligible for benefits under this chapter for each week in the entire month in which a social security disability insurance payment is issued to the individual.

b. In the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

c. Following a cessation of social security disability insurance payments to an individual and upon the individual again being issued a social security disability insurance payment, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

d. Following cessation of social security disability insurance payments, an individual may be eligible for benefits under this chapter, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment.

4. Information that the department receives or acquires from the federal social security administration regarding the issuance of social security disability insurance payments is considered conclusive, absent clear and convincing evidence that the information was erroneous.

Wisconsin Stat. § 108.04(2)(h) provides:

(h) A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in sub. (12) (f) 2m.

Here, the claimant credibly testified he has been receiving SSDI benefits since October or November 2018. Accordingly, Wis. Stat. § 108.04(12)(f) disqualifies a claimant from receiving UI benefits in any week simultaneously covered by a monthly SSDI payment. The language of the statute, as it has been created by the legislature, requires the result reached. The appeal tribunal is required to apply the statute as it is written and has no authority to deviate from its plain language. While such language results in a decision adverse to the claimant, this reflects the legislature's intent in cases such as these.

CONCLUSIONS OF LAW

The appeal tribunal therefore finds that, as of week 28 of 2021, the claimant received social security disability insurance benefits, within the meaning of Wis. Stat. § 108.04(12)(f).

DECISION

The department's determination is affirmed. Accordingly, the claimant is ineligible for unemployment benefits as of week 28 of 2021 and while the claimant is receiving social security disability insurance benefits.

APPEAL TRIBUNAL

By: *Rochelle Jones*
Rochelle Jones
Administrative Law Judge